

House Engrossed Senate Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
Senate
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 157

SENATE BILL 1247

AN ACT

AMENDING SECTION 38-1101, ARIZONA REVISED STATUTES; RELATING TO LAW
ENFORCEMENT OFFICERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-1101, Arizona Revised Statutes, is amended to
3 read:

4 38-1101. Law enforcement officers; right to representation;
5 right to evidence on appeal; change of hearing
6 officer or administrative law judge; definitions

7 A. If an employer interviews a law enforcement officer and the
8 employer reasonably believes that the interview could result in dismissal,
9 demotion or suspension, the law enforcement officer may request to have a
10 representative of the officer present at no cost to the employer during the
11 interview. The law enforcement officer shall select a representative who is
12 available on reasonable notice so that the interview is not unreasonably
13 delayed. The representative shall participate in the interview only as an
14 observer. Unless agreed to by the employer, the representative shall be from
15 the same agency and shall not be an attorney. The law enforcement officer
16 shall be permitted reasonable breaks of limited duration during any interview
17 for telephonic or in person consultation with others, including an attorney,
18 who are immediately available.

19 B. ~~This section~~ SUBSECTION A does not apply to an interview of a law
20 enforcement officer that is:

21 1. In the normal course of duty, counseling or instruction or an
22 informal verbal admonishment by, or other routine or unplanned contact with,
23 a supervisor or any other law enforcement officer.

24 2. Preliminary questioning to determine the scope of the allegations
25 or if an investigation is necessary.

26 3. Conducted in the course of a criminal investigation.

27 4. CONDUCTED IN THE COURSE OF A POLYGRAPH EXAMINATION.

28 C. IN ANY APPEAL OF A DISCIPLINARY ACTION BY A LAW ENFORCEMENT
29 OFFICER, THE PARTIES SHALL EXCHANGE COPIES OF ALL RELEVANT DOCUMENTS AND A
30 LIST OF ALL WITNESSES PURSUANT TO THE FOLLOWING TIME PERIODS AND
31 REQUIREMENTS:

32 1. WITHIN THREE BUSINESS DAYS AFTER THE EMPLOYER'S RECEIPT OF A
33 WRITTEN REQUEST FROM THE LAW ENFORCEMENT OFFICER FOR A COPY OF THE
34 INVESTIGATIVE FILE THAT IS ACCOMPANIED BY A COPY OF THE FILED NOTICE OF
35 APPEAL, THE EMPLOYER SHALL PROVIDE A COMPLETE COPY OF THE INVESTIGATIVE FILE
36 AS WELL AS THE NAMES AND HOME OR WORK MAILING ADDRESSES OF ALL PERSONS
37 INTERVIEWED DURING THE COURSE OF THE INVESTIGATION.

38 2. NO LATER THAN FIVE BUSINESS DAYS BEFORE THE APPEAL HEARING, THE
39 EMPLOYER AND THE LAW ENFORCEMENT OFFICER SHALL EXCHANGE COPIES OF ANY
40 DOCUMENTS THAT MAY BE INTRODUCED AT THE HEARING AND THAT HAVE NOT PREVIOUSLY
41 BEEN DISCLOSED.

42 3. NO LATER THAN FIVE BUSINESS DAYS BEFORE THE APPEAL HEARING, THE
43 EMPLOYER AND THE LAW ENFORCEMENT OFFICER SHALL EXCHANGE THE NAMES OF ALL
44 WITNESSES WHO MAY BE CALLED TO TESTIFY. A WITNESS MAY BE INTERVIEWED AT THE

1 DISCRETION OF THE WITNESS. THE PARTIES SHALL NOT INTERFERE WITH ANY DECISION
2 OF A WITNESS REGARDING WHETHER TO BE INTERVIEWED.

3 D. IT IS UNLAWFUL FOR A PERSON TO DISSEMINATE INFORMATION THAT IS
4 DISCLOSED PURSUANT TO SUBSECTION C TO ANY PERSON OTHER THAN THE PARTIES TO
5 THE APPEAL AND THEIR LAWFUL REPRESENTATIVES FOR PURPOSES OF THE APPEAL OF THE
6 DISCIPLINARY ACTION. THIS SUBSECTION DOES NOT PROHIBIT THE USE OF THE
7 INFORMATION IN THE HEARING OR DISCLOSURE PURSUANT TO TITLE 39, CHAPTER 1,
8 ARTICLE 2.

9 E. THE EMPLOYER OR THE LAW ENFORCEMENT OFFICER MAY SEEK A
10 DETERMINATION BY THE HEARING OFFICER, ADMINISTRATIVE LAW JUDGE OR APPEALS
11 BOARD HEARING THE APPEAL REGARDING ANY EVIDENCE THAT THE EMPLOYER OR THE LAW
12 ENFORCEMENT OFFICER BELIEVES SHOULD NOT BE DISCLOSED PURSUANT TO SUBSECTION
13 C BECAUSE THE RISK OF HARM INVOLVED IN DISCLOSURE OUTWEIGHS ANY USEFULNESS
14 OF THE DISCLOSURE IN THE HEARING. IN DETERMINING WHETHER EVIDENCE WILL BE
15 DISCLOSED, THE HEARING OFFICER, ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD MAY
16 PERFORM AN IN CAMERA REVIEW OF THE EVIDENCE AND MAY DISCLOSE THE MATERIAL
17 SUBJECT TO ANY RESTRICTION ON THE DISCLOSURE, INCLUDING THE CLOSING OF THE
18 HEARING OR THE SEALING OF THE RECORDS, THAT THE HEARING OFFICER,
19 ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD FINDS NECESSARY UNDER THE
20 CIRCUMSTANCES.

21 F. IN ANY APPEAL OF A DISCIPLINARY ACTION BY A LAW ENFORCEMENT OFFICER
22 IN WHICH A SINGLE HEARING OFFICER OR ADMINISTRATIVE LAW JUDGE HAS BEEN
23 APPOINTED TO CONDUCT THE APPEAL HEARING, THE LAW ENFORCEMENT OFFICER OR THE
24 EMPLOYER MAY REQUEST A CHANGE OF HEARING OFFICER OR ADMINISTRATIVE LAW JUDGE.
25 IN CASES BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS, ON THE FIRST REQUEST
26 OF A PARTY, THE REQUEST SHALL BE GRANTED. ALL OTHER REQUESTS, INCLUDING ANY
27 SUBSEQUENT REQUESTS IN CASES BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS,
28 MAY BE GRANTED ONLY ON A SHOWING THAT A FAIR AND IMPARTIAL HEARING CANNOT BE
29 OBTAINED DUE TO THE PREJUDICE OF THE ASSIGNED HEARING OFFICER OR
30 ADMINISTRATIVE LAW JUDGE. THE SUPERVISOR OR SUPERVISING BODY OF THE HEARING
31 OFFICER OR ADMINISTRATIVE LAW JUDGE SHALL DECIDE WHETHER A SHOWING OF
32 PREJUDICE HAS BEEN MADE.

33 G. A PARTY WHO VIOLATES SUBSECTION C OR D, UNLESS THE VIOLATION IS
34 HARMLESS, SHALL NOT BE PERMITTED TO USE THAT EVIDENCE AT THE HEARING, EXCEPT
35 ON A SHOWING OF GOOD CAUSE. THE HEARING OFFICER OR ADMINISTRATIVE LAW JUDGE,
36 ON A SHOWING OF GOOD CAUSE, MAY GRANT THE OPPOSING PARTY A CONTINUANCE,
37 OTHERWISE LIMIT THE USE OF THE EVIDENCE OR MAKE SUCH OTHER ORDER AS MAY BE
38 APPROPRIATE.

39 ~~E.~~ H. This section does not preempt agreements THAT SUPPLANT, REVISE
40 OR OTHERWISE ALTER THE PROVISIONS OF THIS SECTION, INCLUDING PREEXISTING
41 AGREEMENTS between the employer and the law enforcement officer OR THE LAW
42 ENFORCEMENT OFFICER'S LAWFUL REPRESENTATIVE ASSOCIATION.

~~D.~~ I. For the purposes of this section,:

1. "APPEAL" MEANS A HEARING BEFORE A STATE OR LOCAL MERIT BOARD, A CIVIL SERVICE BOARD, AN ADMINISTRATIVE LAW JUDGE OR A HEARING OFFICER.

2. "DISCIPLINARY ACTION" MEANS THE DISMISSAL OR DEMOTION OR THE SUSPENSION FOR MORE THAN FORTY HOURS OF A LAW ENFORCEMENT OFFICER THAT IS AUTHORIZED BY STATUTE, CHARTER OR ORDINANCE AND THAT IS SUBJECT TO A HEARING OR OTHER PROCEDURE BY A LOCAL MERIT BOARD, A CIVIL SERVICE BOARD, AN ADMINISTRATIVE LAW JUDGE OR A HEARING OFFICER.

3. "INVESTIGATIVE FILE" MEANS THE LAW ENFORCEMENT AGENCY'S COMPLETE REPORT AND ANY ATTACHMENTS DETAILING THE INCIDENTS LEADING TO THE DISCIPLINARY ACTION.

4. "Law enforcement officer" means an individual, OTHER THAN A PROBATIONARY EMPLOYEE, who is certified by the Arizona peace officers OFFICER standards and training board or who is a detention officer or correction officer and who is employed by this state or a political subdivision of this state OTHER THAN A MULTI-COUNTY WATER CONSERVATION DISTRICT.

APPROVED BY THE GOVERNOR APRIL 23, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 23, 2004.